

Miscellaneous Department.

MY HEART AND I.

EXORCISE! we're tired, my heart and I.
We sit beside the headstone there,
And wish that nature were carved for us.
The most repulsive were tenderly
The hard types of the mason's knife,
As heaven's sweet life knows earth's life
Which which we're tenderly
You see we're tired, my heart and I.
We deal with books we trusted men,
And in our own blood dredged the pen,
As if such colors could not dry.
We walked to the grave and fortune's end,
We loved too true to keep a friend;
At last we're tired, my heart and I.
How tired we feel, my heart and I!
We seem of no use in the world;
Our families hang weary and unloved
About man's eyes indifferently;
Our voice which thrilled you so will let
You sleep; our tears will dry;
What do we here, my heart and I?
So tired, so tired, my heart and I!
It was not thus in that old time
When Ralph sat with me 'neath the lime
To watch the sunset glow and say:
"Dear love, you're looking tired," he said;
I, smiling at him, shook my head:
"Tis now we're tired, my heart and I."
So tired, so tired, my heart and I!
Though now none takes me on his arm
To hold me close and kiss me warm
Till each quick breath and in a sigh
Of happy languor. Now, alone,
We lean upon the graveyard stone,
Uncheered, unloved, my heart and I.
Tired out we are, my heart and I.
I suppose the world brought diadems
To tempt us, crusted with loose gems
Of powers and pleasures? No, my heart,
We're too weary to desire them;
A pretty child, or God's blue heaven,
We feel tired, my heart and I.

ELIZABETH BARNETT BROWNING.

DR. BROWNING ON THE PEACE AND THE WAR POWERS OF THE GOVERNMENT.

From Browning's Quarterly Review, for July.

VERY few of us who call ourselves loyal men and patriots had at the outbreak of the great Southern rebellion a perfect grasp and distinct perception of the constitutional principles on which it was to be suppressed. All were anxious for its speedy suppression, and that, too, in strict accordance with the Constitution, for, after saving the life and integrity of the Republic, our dearest wish was to save constitutional government; but our minds were not clear as to the principles on which it was to be done. To many it was a question of the expediency of the case, and not of its rightness; and it was not clear that the war power could be constitutionally invoked and exercised against our own citizens, even though in arms against the government.

The Administration adopted in the outset the theory that the rebellion is not civil war, and the rebels are not enemies, but citizens criminally combined to obstruct the administration of justice, and to resist the execution of the laws. This is evident from the President's inaugural address, and his proclamation calling out the militia. Congress itself at the extra session, unless its partial Confiscation Act be an exception, appears to have adopted the President's theory of the rebellion, and we can call to mind no act of that session incompatible with it. But on this theory the government is restricted to the peace provisions of the Constitution. The military forces are not an army organized against enemies, but a posse comitatus acting under the orders of the civil magistrate in aid of the civil authority, just as when called out to aid in suppressing a riot. On this theory, and every assumption of war powers, or appeal to the rights of war, would be manifestly unconstitutional, and unjustifiable on any recognized principles of law. Yet the government, while apparently adopting this theory, which we call the peace theory, and assuming to act in accordance with the peace provisions of the Constitution, has made prizes, sent and received flags of truce, treated captured rebels as prisoners of war, released them on parole, or exchanged them, and done various other things which imply a state of war, and which would be highly improper, in some respects criminal, if the rebels are not enemies as well as criminal citizens.

The adoption of the peace theory by the government as the constitutional theory, and many of its acts being defensible only on the war theory, have continued and increased the confusion in loyal minds, and at the same time given the opposition in and out of Congress some show of reason in organizing themselves as a constitutional party, and in professing to oppose the government on strictly constitutional grounds. If the government adopts and insists on this peace theory, many of its acts are undoubtedly open to the strictest constitutional question. Powell, Kenney, Salisbury, Delaware, Vallandigham of Ohio, and Diven of New York. On this theory the various bills introduced into Congress, one of which has passed the house while we are writing, for confiscating the property of rebels and emancipating their slaves, are, if regarded as penal statutes against the rebels, of doubtful constitutionality. It may be plausibly argued, to say the least, that such measures are not within the purview of the peace provisions of the Constitution, if, if defensible at all, are defensible only under the war power—only on the supposition that the property and slaves in question, are the property and slaves of enemies.

The Constitution says expressly that, "The Congress shall have power to declare the punishment of treason, but no attainder shall work corruption of blood, or forfeiture, except during the life of the person attained." This, taken in connection with the usual and usual good, positively forbids Congress to pass any confiscation laws, as a penalty for treason, except during the life of the traitor. Confiscation of rebel property as a punishment for treason for a longer period than the life of the traitor, would, consequently, according to this interpretation, be manifestly unconstitutional, and the courts would be obliged to treat the Act of Congress authorizing it as null and void. So of emancipation. As a penalty for treason, neither Congress nor the President has any power over the emancipation question. Slavery does not exist under or by virtue of the Constitution of the United States. So far as it has any legal existence at all in the Union, it exists by the *jus proprium* of the several States, and all the Federal government has authority to do with it, is to see that the constitutional provision for the return of persons held to out. If the rebels are to be regarded as enemies, as enemies, but as simply criminal citizens, an act emancipating their slaves would be undeniably in violation of the Constitution, a usurpation of power that no lover of the Constitution can for one moment permit. So far we are disposed to agree with those members of Congress who oppose on constitutional grounds, both confiscation and emancipation.

Yet, we heartily approve of the Confiscation Act, and demand full and immediate emancipation at least of all the slaves claimed by rebels. We hold, indeed, that all the property of the rebellious States, and all held under them, has lapsed to the United States by the rebellion of those States, for we hold, as our readers know, that State rebellion is State suicide, the slaveholders are to be regarded as traitors to the State, the dissolution of the civil society in its territory. But we demand, if Congress will not accept this doctrine, that it authorize the seizure of rebel property as a just indemnity, as far as it will go, of the expenses of the government and the losses by the rebellion of loyal private citizens.

But we cannot make this demand under the peace powers of the Constitution, or on the government theory of the rebellion. We can make it only under the war power, as one of the rights of war, and there only on the theory that the country is not at peace, that the rebellion is civil war, and that the rebels are not only criminal citizens and punishable as such, but enemies against whom the government has all the rights of war. We have against the rebels all the civil rights determined by the Constitution, besides these, all the rights of war against foreign enemies; for all authorities agree that a state of war applies to civil as well as to international war, and the laws of war apply to domestic war in like manner as to a foreign war, or in other words, that the government has against domestic enemies all the rights that it has against a foreign State with which it is at war. That is to say, it has all the rights of a belligerent in addition to its rights as a sovereign.

This clears up the confusion we have referred to, as may be seen in Mr. Sumner's masterly speech in the Senate on Confiscation, the title of which we have quoted at the head of this article. Mr. Sumner has drawn sharply the distinction between the peace powers of the Constitution and the war power, and shown what we can and what we cannot do under each of them. He has done no more, but state in our own way his positions, and we refer to his speech for the authorities he cites in their support, and for

the arguments by which he sustains them. In that speech he proves himself to be as scrupulously attached to the Constitution as he is ardent and unreserved in his devotion to the theory. He is not merely the warm-hearted abolitionist, the indomitable advocate of negro emancipation, but also an able and profound constitutional lawyer.

The question might arise whether the rebels are not States rather than individuals. The States have acted in their State capacity, and demanded the support of their citizens by virtue of their allegiance to the State. In such a case the demand for indemnity and security would be against the State, and not directly against the individuals. The war power, as taken in its widest scope, is the power of the nation, as in the article on *The Struggle of the Nation, for Life*. We have since looked more closely into the question of State Sovereignty than we had previously done, and have come to the conclusion that the States are not and never were sovereign States either in law or in fact, that the American people are, and always have been, one political people, and that the undivided allegiance of the citizen is due to the United States, and not to the United States alone. The State by rebellion forfeits all its rights, its very existence ceases to be a legal entity, and therefore the citizen is not bound by any of the acts or enactments of the pretended State after its rebellion. Hence he must be held individually responsible for his rebellion, and be accounted personally an enemy.

The right to confiscate enemy property under the war power is inalienable, but the war power itself is not a constitutional power. As against foreign enemies it is certainly constitutional, and equally so, if the doctrine we have asserted be sound, against domestic enemies. The war power is not, as some seem to suppose, a power above or outside of the Constitution. Every sovereign State has, by virtue of the sole fact that it is a sovereign, the inherent and indefeasible right of self-defense, of preservation, of demand redress for injuries inflicted, and to guard against injuries threatened. In this is founded the right of war, whence flows the war power. The war power is inherent in the United States as a free, independent, and sovereign State, and is by the political people of the United States expressly vested by the Constitution in Congress, as any one may see by reading Article I, Section 8. The Constitution recognizes the war power, and confers it on Congress. It is, then, a constitutional power, as constitutional as any of the peace powers.

The principle on which we defend the constitutionality of confiscation of enemy property enables us to defend the emancipation of the enemy's slaves as a strictly constitutional measure. We hold, as we endeavored to prove in our last Review, that the slaves in all the rebellious States are already legally free. The suicide of those States of itself emancipated the slaves, and the Federal government has no authority to remand them to slavery.

We have no doubt, as we maintained last October in our article on *Slavery and the War*, that the President, as Commander-in-Chief of the Army and Navy, has the power to emancipate the slaves, when and where in his judgment it is a military necessity, or necessary to the military operations in hand. So, we think, has in his department any General having a departmental command, unless he has received positive instructions from his superior not to do so. The President, as Commander-in-Chief of the Army and Navy, has the power to emancipate the slaves, when and where in his judgment it is a military necessity, or necessary to the military operations in hand. So, we think, has in his department any General having a departmental command, unless he has received positive instructions from his superior not to do so. The President, as Commander-in-Chief of the Army and Navy, has the power to emancipate the slaves, when and where in his judgment it is a military necessity, or necessary to the military operations in hand. So, we think, has in his department any General having a departmental command, unless he has received positive instructions from his superior not to do so.

But the power of the Commander-in-Chief to emancipate the slaves is confined to strict military necessity, and he can do it only as strictly necessary to his military operations. The Commander-in-Chief may believe, though it would be highly advantageous to the general prosecution of the war to emancipate the slaves, that it is not in a military point of view necessary, and therefore, very properly refuse to proclaim emancipation. The power, therefore, though in certain supposable cases in the President, yet as it is included in the war power of the government, is more properly vested in Congress. It is a war power rather than a military power, and emancipation must be regarded as a war measure rather than as a military operation, or military expedient. The military power is the power of the Commander-in-Chief, but Congress can adopt it only as a useful or advantageous war measure, a measure useful in prosecuting the war, in securing its ends, or in bringing it to a speedy and successful issue.

Judge Trumbull, in his able speech on introducing a bill into the Senate, at the opening of the session, for confiscating the property and emancipating the slaves of rebels, has dissipated the notion entertained by not a few, that the war power and the military power are one and the same, and that only the military can exercise the war power. He cleared up no little confusion by showing that the war power is the legitimate power of the government, and vested by the Constitution in Congress. The executive department, so to speak, of the war power, as of the other powers of the government, is committed to the President, who is made by the Constitution Commander-in-Chief of the Army and Navy; but the power to determine the policy and purposes of the war is expressly vested in Congress, and the President acts simply in prosecuting it, as the executive department of the government. It is not true to suppose that the war power comes into play only under martial law, and that under the war power the civil gives way to the military. Under our Constitution, the civil government holds the war power, and it is by the authority of the civil government that the military operates, and has the right to exercise it. The President, as chief civil magistrate of the nation, watches over the general welfare, takes care of the Republic, and sees that the laws are executed,—and to this end he is made Commander-in-Chief of the Army and Navy, or the whole land and naval forces of the Union. His military command is, therefore, subsidiary to his office as Chief Magistrate. The military is only an arm of the civil government, and can rightly move only by its will. For it is as the chief civil magistrate that the President calls out the militia to repel an invasion, or to quell an insurrection, or has the chief command of the land and naval forces.

It is of great importance to keep this always in mind. The civil authority, under our system, controls the military. The war power is not the prerogative of the military, but of the civil government, and the military operates under and not over it.

The real danger to our institutions comes from the theory that the rebels are more and more of the duties of government on the President. He exercises in times of war extraordinary powers, and prudence requires that no more should be thrown upon him than properly belongs to his office. It is necessary to keep distinct and separate the several departments of government, as was intended by the Constitution, and for each department to take care to neglect none of its own duties, and to avoid encroaching upon those of either the others. The habit of depending upon the Executive duties which properly belong to Congress, or calling upon it to do what Congress itself can do, is fraught with danger, and may, if not checked, cause or permit the President to grow into a military chieftain, but into a civil chieftain, which is a great deal worse. For these reasons, we prefer that the war power should be insisted on to be adopted by Congress rather than by the President, for as civil magistrate the President has no power to do more than recommend it to Congress, and as the holder of the military power he can do it only in a military emergency. In any case, it is more in accordance with the spirit of our institutions that it should be done by the military authority. Besides, Congress has freer scope under the war power, and may take a larger and more liberal view of what is called military necessity than the Commander-in-Chief can, though not in the strictest sense of the term, but in the necessary, and even though it be not morally impossible to suppress the rebellion without decreasing it.

It can do it whenever it regards it, in the exercise of its best judgment, a wise and prudent measure, and likely to be highly advantageous in prosecuting the war, or in obtaining the desired security for the future. We assert the constitutional right of Congress under the war power to declare universal emancipation as a war measure. But, as a war measure, it is obvious that Congress can adopt it only while the war is pending. When the war is over and peace has returned, Congress has no longer any power over it, for we have seen that emancipation in the States does not depend on the scope of the peace powers of the Federal government, but on the scope of the war powers. We have great respect for the Chief Magistrate of

the Union; we have great confidence in his shrewdness and judgment, and would treat with grave consideration any opinions, wishes, or even prejudices of his, however unreasonable they might appear to our eyes, but we must confess that we have great difficulty in not losing our patience when we hear people talk about gradual emancipation. What kind of use will gradual emancipation be as a war measure? If you mean to adopt emancipation as a war measure, you must do it at once, and speedily; if you mean to recommend it only as a peace measure, to be carried out after the war is over, we do not wish that you should meddle with it.

We have never heard a respectable argument in favor of gradual emancipation. "Hope deferred makes the heart sick," and the worst school possible in which to acquire the habits of freemen is slavery. What good purpose do you propose to answer by gradual emancipation that could not be answered equally, if not better, by immediate emancipation?

Let us see another view of the case which so religious a man as the President ought not to neglect. Slavery is an injustice, a sin in the State that authorizes it, and in our case becomes a national sin. The moment the government gets the constitutional power to abolish it, and neglects to exercise that power. * * *

One way, and one way only is open to us; one alternative yet remains, and that is to do what should have been done one year ago—*decrees complete and immediate emancipation*. It is the only means left us of escaping a shameful mutilation of the Republic. In the mean time, the President hesitates, longs but fears to strike, and Congress wrangles, and lets the golden moment glide by. Terrible will be the responsibility of the government, both executive and legislative, if the rebellion succeeds. On them, not on the rebels, will fall the blasted curse of outraged humanity.

We, however, still hope, before we appear in print, Congress will have reconsidered its vote rejecting the Emancipation Bill, and have passed an act freeing all the slaves of the rebels.

THE CHANGED CROSSES.

It was a time of sadness, and my heart,
Although it knew and loved the better part,
Pelted with the conflict and the strife,
And all the needed discipline of life.

And white I thought on this, as given to me
By some sad fate, and I was glad to see
It seemed as if I never could be sure
That faithful to the end I should endure.

And thus, no longer trusting to His might
Who says, "We walk by faith and not by sight,"
But I had almost said, "I cannot bear!
The thought arose—My cross I cannot bear!"

Par heavier its weight must surely be
Than those of others which I daily see;
Oh, if I might another burden choose,
I should choose none but my crown to lose.

A solemn silence reigned on all around,
And nature's voice uttered not a sound,
The evening shadows seemed of peace to tell,
And sleep upon my weary spirit fell.

A moment's pause—and then a heavenly light
Beamed full upon my wondering, rapt sight,
Angels on either side, and everywhere,
And angels' music thrill'd the balmy air.

Then One, more fair than all the rest to see,
One, to whom all the others bow'd the knee,
Came gently to me as I trembling lay,
And said, "Thou art my crown to-day."

Then speaking thus, He led me far above,
And there, beneath a canopy of love,
Crosses of diverse shape and size were seen,
Larger and smaller than mine own had been.

And one there was most beautiful to behold,
A like one, with rays of light around it shod,
Ah, this methought, I can with comfort wear,
For it will be an easy one to bear.

And so the little cross I quickly took,
But all at once my frame beneath it shook;
The sparkling jewels fair were to me seen,
But too heavy was their weight for me.

This may not be, I cried—and looked again
To see if any there could ease my pain,
But one by one I pass'd them slowly by,
Till on a lovely one I cast my eye.

Pale flowers around its sculptur'd form entwined,
A like one, with rays of light around it shod,
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RETTY MARVIN.

When the British and Tories attacked New London, Connecticut, in 17—, and set a price on the head of Gov. Griswold, the latter fled to the town of L—, where his cousin, Mrs. Marvin, hid him, for some days, in a secluded farm-house. But at length the subtle foe discovered his retreat, and one sunny afternoon in May, he was routed from his hiding-place by the tidings that a band of horsemen were approaching to capture him.

His only chance of escape was to reach the mouth of a little creek which emptied itself into the Connecticut river, just above the entrance of the latter into Long Island Sound. There he had a boat stationed, with two faithful attendants hidden beneath the high banks of the creek. The distance from the farm-house to the boat was two miles by a travelled road. But a little sheep-path across the farmer's orchard would bring him to the road only a mile from the boat, and save a quarter's length of his fearful run for life.

Just where the narrow path from the orchard opened into the road, Hetty Marvin sat with her dog Towser. Thus sat Hetty Marvin, the young daughter of Gov. Griswold's cousin, when her hunted friend sprang past her into the road to escape his pursuers. Hetty was a timid child of about twelve years; yet thoughtful and wise beyond many of her elders. She was frightened by the heading baste with which the Governor rushed across the meadow. But she quickly comprehended the scene, and instantly quitted her faithful Towser, who, though a friend of the family, thought it becoming to bark loudly at his hurried steps.

Her first forethought arrested the Governor's notice, and suggested a scheme to delude his pursuers. "Hetty," he said, earnestly, "I am flying for my life, and unless I can reach my boat before I am overtaken, I am a lost man. You see the road forks here. Now I want to run down this way to the river. But you must tell the rascals who are chasing me that I have gone up the road to catch the mail wagon, which will soon be along, you know. Then they will turn off the other way."

"Oh, cousin," said the little girl, in an agony of distress, "I cannot tell a lie; indeed, I cannot. Why did you tell me which way you were going?"

"Hetty, my child, surely you would not betray me to my death. Hark! they are coming; I hear the click of their horses' feet. Oh! Hetty, tell them I have gone up the road instead of down; and heaven will bless you!"

"Heaven never blesses those who speak falsely, cousin. I will not tell them which way you go, even if they kill me; so run quickly as you can."

"It's no use; unless I can deceive them, I am a dead man!"

"Cousin, cousin, hide under my web of cloth; they'll never think of looking here for you. Come, get down as swift as you can, and I'll cover you, and stand sprinkling my finch."

"It's my only chance, child; I'll get down as you say. And, suiting the action to the word, the Governor was soon hidden under the ample folds of the cloth."

Angry that their expected prey had escaped from the house where they hoped to secure him, the six mounted troopers, headed by a British officer, dashed along the road in swift pursuit. At sight of the little girl in the meadow, the leader of the party paused.

"Child," he said, sternly, "have you seen a man running up the road?"

"Yes, sir," replied Hetty, trembling and blushing. "Which way did he go?"

"I promised not to tell, sir."

"But you must not take the consequences."

"I said I wouldn't tell if you killed me," sobbed the frightened girl.

"I'll have it out of her," exclaimed the furious officer, with an oath.

"Let me speak to her," said his tory guide; "I know the child, I believe. Isn't your name Hetty Marvin?" he asked, pleasantly.

"Yes, sir."

"And this man who ran by a few minutes ago was your mother's cousin, wasn't he?"

"Yes, sir; he was."

"Well, we are friends of his. What did he say to you when he came along?"

"He told me—that he was lying for his life."

"Just so, Hetty; that was very true. I hope he will be able to do so. What was he going to try to hide? You see I could help him if I knew his plans."

"Now Hetty was not a wit devoided by this smooth speech; so she answered her questioner candidly: "My cousin said that he was going down this way to the river, where he had a boat; and he wanted me to tell the men that were chasing him, that he had gone the other way to catch the mail wagon."

"Why didn't you do as he bid you, then, when I asked where he had gone?" thundered the officer, fiercely.

"I could not tell a lie, sir," was the tearful answer. "Hetty," again began the smooth-tongued tory, "you are a nice child. Everybody knows you are a girl of truth. What did your cousin say when you told him you couldn't tell a falsehood?"

"He said he shouldn't think I'd betray him to his death."

"And then you promised him that you wouldn't tell which way he went, if you were killed for it?"

"Yes, sir."

"That was a brave speech; and so, I suppose, he thanked you for it, and ran down the road as quickly as possible?"

"I promised not to tell where he went, sir."

"Oh, yes, I forgot. Well, tell us his last words, and we won't trouble you any more."

"His last words were, 'I'm my only chance, child, and I'll get down as you say.' And he overcame by the fright, and the sense of her kindness, that she should thoughtfully interpret the language which she had reported, she sobbed aloud, and hid her face from sight."

Her tormentors did not stay any longer to soothe or question her. They had got, as they supposed, the information which they wanted, and pushed rapidly on down the river. Now, the Governor had arranged a signal with his boatmen, that a white cloth by day, or a light in the night, displayed on the attic window of his hiding-place, which was just visible at the mouth of the creek, should inform them if he were in trouble, and put them under the alert to help him. As soon, therefore, as he started from his cousin's, the signal floated from the window to warn them. And when they saw the pursuing party dash madly down toward the river, and recognized the British uniform of the leader, they pulled up in season to see the boat with two men in it, nearly out of sight, and supposing their destined prey had escaped, relinquished the pursuit.

Meanwhile, the hunted victim lay safe and quiet where his little cousin had hidden him, until the time came for her return to the house for supper. Then he bade her go as usual to her home, telling her to ask her mother to place the signal lamp, as soon as it grew dark, in the window for the boatmen, and to send him there soon after supper, with his horse, which, in the hurry of departure, he had left behind.

The signal recalled the boat, which after twilight had ventured in sight of the shore and the farm-house; and the Governor quietly made his way to the river in safety. When he rejoined his father in a secure home, he named his infant daughter, which had been born in his absence, Hetty Marvin; that he might be remembered of the little cousin who had saved his life—*Student and Schoolmate*.

AMERICAN GENTILITY.—In European countries the aim at anything like gentility implies keeping one or more domestics to perform household labors; but in our free States every family aims at gentility; while in our five keeps a domestic. The aim is not a foolish one, though follies may accompany it—for the average ambition of our people includes a certain amount of refined cultivation;—it is only that the process is existing. Every woman must have her parlor, with hair-cloth furniture and a photographic book; she must have a piano, or some cheaper substitute; her little girls must have embroidered skirts and much mathematical knowledge; her husband must have two or even three hot meals every day of his life; and yet her house must be in perfect order early in the afternoon, and she prepared to go out and pay calls, with a black silk dress and a lace cap. The evening she will go to concert and a lecture, and there, if of all, she will very possibly sit up after midnight with her sewing-machine, doing extra shop-work to pay for Little Ella's music-lessons. All this every "capable" New England woman will do, or die. She does it, and dies; and then we are astonished that her vital energy gives out sooner than that of an Irishwoman in a shanty, with no ambition on earth but to supply her young Patriots with adequate potatoes.—*W. W. Higginson*.

A CURE FOR LONG SERMONS.—A sufferer from long sermons suggests to the London *Times* that, after half an hour's preaching, the bottom of the pulpit should be contrived to come out, on the principle of an obolite, and project the exasperated transgressor into the gulf below. Another proposes that a sounding-board or cover, in the shape of an extinguisher, must exactly fit the pulpit, be suspended above it, and that at the expiration of twenty-five minutes from the delivery of the text it should begin to descend, so as, exactly at the half hour, to "shut up" the lengthy preacher.

FAITH AND WORKS.

Not what we think, but what we do,<